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SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Victor John Wells

Local Tribunal: Leicester

Case No: 90/1

[ORAL HEARING]

1. My decision is that invalidity benefit is payable to the claimant for the inclusive period from 3 February to 4 April 1984.

2. The claimant worked for many years as a calibrator of electrical instruments and became incapable of that work in the year 1982 by reason of the condition of his spine coupled with asthma. He claimed and was awarded sickness benefit followed by invalidity benefit until the latter benefit was stopped with effect from 3 February 1983 after the claimant had been referred successively to two medical officers of the Department each of whom had expressed the opinion that the claimant, though incapable of work as a calibrator, was capable of work within certain limits. By that time the time had certainly arrived when the claimant's capacity for work fell to be determined by reference to a wider field of employment than that of his regular occupation; and if the opinion of the medical officers was correct then the claimant was no longer entitled to benefit.

3. The stoppage of the benefit took the form of a decision by the insurance officer refusing benefit for the period mentioned in paragraph 1 which was the balance of a period covered by a claim made on 5 January 1983. The claimant appealed to the local tribunal unsuccessfully against this decision; and he now appeals to the Commissioner. He was represented at the oral hearing before me by Mrs S Maunders of the Saffron Resource Centre, Leicester and the adjudication officer was represented by Mr M N Qureshi of the Solicitor's Office of the Department of Health and Social Security.

4. The question is whether there was at the time any work for which an employer would pay that the claimant could reasonably be expected to do. It was the opinion of the two medical officers that there was, but they were not specific about the nature of the work that they had in mind, though they were in agreement about important categories of work that he could not do, such as outdoor work in all weathers, and work involving exposure to dust and fumes. One of the doctors ruled out work involving prolonged sitting except in a well-chosen chair. The claimant attended the hearing before me and I asked him if the seat in which he sat was satisfactory and he told me that it was not. Accordingly I indicated that he was free to get up and walk about if that became necessary. He remained seated however throughout the hearing. I question whether he needs to move from a sitting position as often as was claimed on his behalf.

5. After the claimant's first examination by an officer of the Department he was invited to attend the unemployment benefit office for an interview with the Disablement Resettlement Officer (DRO). He did not in fact attend. X Whether this was a deliberate decision of his or not it is certainly unfortunate, as DRO's often have a better informed picture than doctors of the types of employment that exist in the real world and their reports can often assist claimants in establishing incapacity for work.

6. The claimant's own doctor, who gave the medical certificate on which the present claim was based, gave a report dated 16 March 1983 in which he stated that while he was not willing to state that the claimant was unfit to do any type of work, he could only undertake work in which there was a minimal amount of physical effort. I was informed also that the claimant had no experience with clerical work. I would assume however that if he was competent to work as a calibrator of electrical instruments he would be mentally capable of undertaking such work. The claimant, though present at the hearing, gave no evidence about his condition or capacity.

7. On the evidence so far summarised I should have considered that the claimant had not proved that he was incapable of work. But the claimant's case was put somewhat differently by Mrs Maunder. She maintained, correctly, that the evidence showed that the classes of work that the claimant could undertake were severely limited; that it was virtually impossible for a person, on whom lay the burden of proving incapacity for all work, to go through every category of work for which an employer would pay and demonstrate either that he could not reasonably be expected to do it, or else that he was incapable of doing it. She submitted that having established the limitations, it was for the adjudication officer to suggest real employments that the claimant could undertake and for the claimant then to demonstrate that he could not do them or that they were in some way not suitable to his abilities (so that he could not reasonably be expected to do them). This has long been accepted as the approach to the similar question that arises in connection with special hardship allowance (see Micklewait on The National Insurance Commissioners at pages 107-8); and a similar approach in the case of sickness and invalidity was approved by the Commissioner in his decision on file CS/83/1983 (not reported). I accept that it is a fair approach. Indeed the local tribunal adjourned their proceedings to enable the insurance officer to detail the work that the claimant could do.

8. The insurance officer put forward (1) light bench assembler and packer (2) social club doorman. On behalf of the claimant, submissions were made that the employment in light bench assembly or packing would involve the claimant in doing things which the medical officers of the Department considered should be avoided. As for doorman of a social club the claimant's representative furnished a job specification from one club which indicated that a doorman had to be fully mobile and physically active, and that the club attracted non-members who tried to gain entry (contrary to the licensing laws) who had to be excluded and on occasions used or threatened violence. The tribunal having adjourned for the purposes of enabling the insurance officer to furnish these particulars, proceeded to dismiss the appeal without reference to them broadly on the grounds that I indicated (at the beginning of paragraph 7) would have justified a finding that incapacity was not shown but for the points outlined in that paragraph.

9. I have therefore to decide whether those points are of sufficient weight to establish incapacity in this case. On the question of doorman I considered that the job specification provided indicated (if it was typical) that the job of doorman at a social club was not suitable for the claimant unless he was, on compassionate grounds, excused from the heavier duties. Mr Quereshi submitted that there were many classes of doorman whose duties were not so heavy, but furnished no job specifications. It is of course an every day experience to encounter doormen who do not, when encountered, have heavy work to perform; but one does not know what their full duties involve; eg I would suppose that many doormen are required to shift heavy packages delivered to their employers' premises. Mrs Maunders submitted that the adjudication officer had had ample opportunity to adduce evidence of what is required of other doormen, and had not done so and should not now be given a further opportunity of doing so. Possibly if this had been adversarial litigation I should have acceded to that submission; but having a duty to investigate the facts, I allowed Mr Qureshi an opportunity of adducing evidence on the point. The evidence so produced comprised a job description furnished by the DRO (who says that vacancies for doormen are rare and mainly part-time). The job description so furnished relates primarily to doormen at entrance to an establishment such as theatre, cinema, store or hotel and it includes the meeting and hailing of taxis for patrons, the control of queues, the regulation and movement of patrons to ensure that pavements are not obstructed and in some cases the control of car parking. It does not appear to me that this is in any way suitable for the claimant who, it is agreed should not be called on to do work out of doors in all weathers. Indication was given that jobs are to be found for car park attendants, but this again is not suitable for the claimant as it involves working out of doors.

10. As I accept that work as doorman is not work that the claimant can reasonably be expected to do, I have to consider the question of work in light assembly or as a packer which is work that he can reasonably be expected to do. The evidence about the nature of the work is scanty; but I am not prepared to assume (as seems to be suggested by the written ~~submissions~~ submissions on behalf of the claimant) that this work can only be done in dusty conditions. Furthermore I do not consider that I can go beyond the medical evidence as to the claimant's incapacity, not having heard him giving evidence about his condition and not having the advantage of the opinion of the DRO. Even with these limitations however I think that it is established that the claimant cannot do the work suggested. Both medical officers indicate that the claimant has substantial impairment of his capacity for bending, lifting and carrying, and this must I think be an insuperable obstacle to working as a packer. One of the medical officers points to the fact that the action of screwing and unscrewing may be difficult, indicating an impairment of manual dexterity which would make assembly work impracticable. I do not ignore that the claimant's own doctor felt unable to say that there was nothing that the claimant can do. It may be that if the claimant makes a further claim the adjudication officer will adduce evidence about other types of employment that the claimant can do. But I have accepted the approach to the question that has

been adopted in relation to special hardship allowance as appropriate also in cases of long-term invalidity (Decision CS/83/1983 supports this also); and I consider that, the claimant having disposed of the employments suggested, is entitled to succeed on the present claim and his appeal is allowed.

(Signed) J G Monroe
Commissioner

Date: 18 December 1984

Commissioner's File: CS/192/1984
C A O File: AO 3077/V/84
Region: Midlands